

Status of MARAD Ships in the United Kingdom

ISSUE:

MARAD has asked for EPA's position on the possible return of 4 vessels from Able UK, England, to the United States for scrapping. These vessels contain PCBs and are subject to TSCA 6(e) and its implementing regulations at 40 CFR Part 761 that prohibit the importation of PCBs at any concentrations for disposal (§761.93).

BACKGROUND ON SHIPS:

The 4 ships (COMPASS ISLAND, CANOPUS, CANISTEO, CALOOSAHATCHEE) are surplus ex-Navy non-combatant vessels that are part of the National Defense Reserve Fleet (NDRF) managed by MARAD. Of 1940s to 1960s vintage, they contain PCBs at concentrations of 50 ppm or greater in cable, gaskets, caulking, paint and other miscellaneous non-liquid PCB applications.

In 2003, these 4 vessels were exported by MARAD from the James River Reserve Fleet (JRRF) to the Able UK shipyard in Teesside, U.K. for scrapping. Despite a prohibition on the export of ≥ 50 ppm PCBs for disposal, EPA permitted the export through a May 22, 2003 grant of enforcement discretion to MARAD.

The export was challenged by Basel Action Network (BAN) et. al. in the U.S. District Court for D.C. The court allowed the export of the first 4 vessels to proceed as part of a congressionally sanctioned pilot project, but prevented the export of 9 additional vessels.

While the 4 ships were being towed across the Atlantic in October/November 2003, the Able UK shipyard was sued by NGOs over the validity of its permits to scrap ships. The U.K. Environment Agency determined that the permits were improperly issued. Despite this, the UK government reluctantly allowed the 4 vessels to complete their cross-Atlantic tow and be berthed at Able UK's pier pending resolution of the permit issue.

A U.K. Court ruled in December 2003 that Able UK could not proceed to scrap ships until new permits had been issued. Able UK's applications for new permits were rejected by the local planning council on October 12, 2006. Although Able UK may appeal this decision, any reconsideration of this decision will likely take a year or more.

In early 2007, MARAD and Able UK considered cancelling their 2003 contract for the scrapping of the vessels; which would have resulted in MARAD needing to remove the 4 ships from the Able UK this year. MARAD did not specify a date, but if it were to cancel, the UK government would almost certainly insist on their prompt removal. Conditions will be suitable for towing no later than April or May, possibly earlier if an alternative southerly route is used.

On March 1, EPA learned that MARAD may be considering transferring title to Able UK, which could result in the ships being transferred to another shipyard in the UK for dismantling.

In a conversation with the EA-UK, we were told that EA UK would need to provide a Trans Frontier Shipment (TFS) approval as required by the OECD to allow the vessels to be moved and they assured EPA that they would approve only another facility in the UK or OECD country with facilities similar to those in the UK.

EPA learned on March 29 that an agreement had been reached between MARAD and Able UK to extend Able's contract for an additional year to allow it time to find another suitable ship scrapping facility in the UK or appeal its permit denial for the Teesside facility.

Exemption 5 - Deliberative Process Privilege

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